S.B.Criminal Revision Petition No.368/2007

Smt. Jhamku
v.
State of Rajasthan & Anr.

Date of Order :: 6th December, 2007

HON'BLE MR.JUSTICE GOVIND MATHUR

Mr. Sandeep Shah, for the petitioner.
Mr. O.P.Rathi, Public Prosecutor.
Mr. A.K.Acharya, for the respondent No.2.

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This petition under Section 397 read with 401 Cr.P.C. is preferred to assail validity, correctness and propriety of the order dated 26.2.2007 passed by learned Sub Divisional Officer, Sriganganagar in Cr. Misc. Case No.1/2007 (State v. Sunil Kumar & Anr.) refusing to hand over possession of the land in dispute that is situated in Chak-1, M.L.Kaluwala.

In brief, the factual matrix of the case is that the petitioner submitted an application before the police station Sadar, Sriganganagar stating therein that on 19.3.1999 Sunil Kumar (respondent No.2) came to her house and forcibly snatched the keys and took forcible possession of two rooms of the house. She also stated that the land measuring 13 bighas belonging to her husband was also forcibly taken in possession by aforesaid Sunil Kumar on the

same day. The Station House Officer of Police Station, Sadar, after due investigation submitted a complaint as per provisions of Section 145 Cr.P.C. apprehending injury to peace and blood shedding between the parties relating to agricultural land. Subsequent thereto by an order dated 31.5.1999 for initiating proceedings under Section 146 Cr.P.C. a receiver was appointed. Respondent Sunil Kumar in the proceedings aforesaid claimed his share in the property by claiming himself an adopted son Late Shri Rampratap (husband of the petitioner). The Additional District Magistrate (City), Sriganganagar by an order dated 12.7.2002 held that the proceedings under Section 145 Cr.P.C. were rightly initiated and both the parties were directed to get their title decided on the land in dispute by Civil Court, while keeping possession over the land with receiver. The order passed by learned Additional District Magistrate came to be affirmed by learned Additional Sessions Judge No.2, Sriganganagar vide order dated 24.4.2004 while deciding the revision petition preferred by the petitioner. A challenge was given by the present petitioner to the order dated 24.4.2004 by way of filing a misc. petition under Section 482 Cr.P.C. before this Court, however, during pendency of that civil suit with regard to cancellation of adoption deed dated 1.10.1997 whereby respondent Sunil Kumar was adopted as son of the petitioner and her late husband Shri Rampratap was decreed and the adoption deed referred above stood

cancelled. A regular first appeal against the judgment and decree of the civil court (SBCivil First Appeal No.123/2005) is pending for hearing before this Court, however, the application seeking interim order has already been rejected by this Court on 2.1.2007. The petitioner looking to the decree passed by the civil court withdrew the misc. petition on 21.7.2006 and submitted an application before the Sub Divisional Officer, Sriganganagar to hand over possession of the land in dispute to her. The application aforesaid stood rejected by order impugned dated 26.2.2007 on the count that though the suit relating to adoption deed has been decreed but the question regarding title was not decided. Learned Sub Divisional Officer also held that till disposal of first appeal the order passed by the Additional District Magistrate shall remain in currency and, therefore, denied to hand over possession of the land.

The contention of counsel for the petitioner is that once adoption deed has been cancelled and in first appeal the application for interim relief has already been rejected, there is no valid reason available for maintaining possession of the land with the respondent.

Per contra, it is asserted by counsel for the respondent that the land in question was in his possession being adopted son of the petitioner and her

husband and till disposal of that question by this Court in First Appeal No.123/2005, he cannot be stripped off from possession of the land in question.

Heard.

It is not in dispute that the possession over the land was claimed by the respondent being adopted son of the petitioner and her late husband Shri Rampratap. It is also not in dispute that the adoption deed has already been cancelled by decree of the civil court and in first appeal this Court has already rejected the request for interim relief. After rejection of the application for interim injunction, I do not find any just reason to permit respondent Sunil Kumar to retain possession of the land. Learned Sub Divisional Officer without considering effect of the decree passed by the civil court and also rejection of the application seeking temporary injunction, rejected the application seeking possession of the petitioner over the land in dispute. The order, therefore, is erroneous and the same deserves to be quashed.

Accordingly, this revision petition is allowed. The order passed by Sub Divisional Officer, Sriganganagar dated 26.2.2007 refusing to hand over possession of the land is quashed. The application submitted by the petitioner is allowed. The Sub Divisional Officer, Sriganganagar shall ensure that

possession of the land be handed over to the petitioner forthwith.

(GOVIND MATHUR),J.

Kkm/ps.